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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Second periodic reports of States parties due in 1990

Addendum

ZAMBIA* **

[27 January 1995]

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* For the initial report submitted by the Government of Zambia, see document CCPR/C/36/Add.3, and for its consideration see CCPR/C/SR.772, SR.773 and SR.776 or Official Records of the General Assembly, Forty-third session, Supplement No. 40 (A/43/40), paras. 89-144.

** The information submitted by Zambia in accordance with the guidelines concerning the initial part of reports of States parties is contained in the core document (HRI/CORE/1/Add.22/Rev.1). Annexes to the report are available for consultation in the files of the Secretariat.

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INFORMATION IN RELATION TO ARTICLES 1-27 OF THE COVENANT

Article 1 - Right to self-determination

1. Zambia achieved the right to self-determination on attainment of independence from Great Britain in 1964. The reintroduction of multi-party democracy in December 1990 further fulfilled the realization of this right.

2. At the international level, Zambia has traditionally been a strong proponent and supporter of the right to self-determination. Its contribution to the struggle for the liberation of Angola, Mozambique, Zimbabwe, Namibia and the eradication of apartheid in South Africa is a matter of public record.

Article 2 - Rights recognized in the Covenant

3. The rights set forth in the Covenant are embodied in Part III of the Zambian Constitution. Many matters relevant to article 2 have already been discussed in the core document (HRI/CORE/1/Add.22/Rev.1). Apart from the constitutional enunciation there are other statutory provisions that provide for protection of fundamental freedom and human rights. As for the question of victims of violation, Zambian law establishes institutions such as the courts which provide redress in cases of proven violations. Zambia has ratified the Optional Protocol to the International Covenant on Civil and Political Rights, thereby recognizing the right of individuals to submit complaints of violations to the Committee. This shows the commitment of Zambia to recognize and to try to ensure the protection of the rights of its people.

4. As a result, a number of people have filed complaints before the Committee in which they have alleged violation of the rights protected by the Covenant. For example, Mr. Peter Chiko Bwalya filed a complained in 1988 in which he alleged violations of articles 7 to 10 of the Covenant. Although Zambia did not submit any substantial response to the allegation and the Committee found that there was a violation of Mr. Bwalya's rights protected by the Covenant, Zambia was obliged to grant appropriate compensation to Mr. Bwalya. Zambia has since settled the matter amicably with Mr. Bwalya. Zambia is also in the process of settling the claim involving Mr. Henry Kalenga who filed his complaint before the Committee in 1986, the Committee having directed that Zambia should make appropriate remedy to Mr. Kalenga.

Article 3 - Equality between men and women

5. The Zambian Government recognizes that Zambian women do not experience and enjoy equality with men and do not fully participate in all aspects of national economic, social and cultural development of Zambian society. To encourage women to attain the necessary educational and professional skills essential to equip them for their participation in development, Government with the assistance of the international community and NGOs is putting into place measures aimed at securing and encouraging women to participate in the affairs of the country.

6. In terms of public life women still feel marginalized as they have not made a great impact in the political sector. There are only two women cabinet ministers and about five women members of Parliament. In the judiciary there are no female Supreme Court judges and there has never been one since independence in 1964. However, there are two female puisne judges. The Investigator General is a woman.

7. In the economic sector women do not earn sufficient money as their male counterparts do, because they cannot get certain well-paying jobs due to their lack of professional educational skills. This is because women were discouraged from taking up subjects such as science subjects in their secondary and university education. These could have earned them better-paying jobs. Traditionally, women have experienced discrimination and still do in their own homes. Women are given chores to do in the home while their male counterparts are studying, thereby affecting their school results. Furthermore, girls are encouraged to drop out of school at an early age so that they can assist their parents in income-generating activities such as marketeering, while their brothers continue with their education.

8. In the past women could not obtain loans and mortgages from financial institutions without consent of the husband and as a result they could not own real property.

9. As indicated by the Sara Longwe case women in Zambia suffer social discrimination and they still have a long way to go before equality with men is fully realized. Several NGOs and Government are carrying out seminars and workshops to bring about gender awareness in both men and women and projects are being carried out to encourage women to be self-reliant economically.

Article 4 - Declaration of public emergency

10. Article 30 of the Zambian Constitution provides for the declaration of a state of emergency. The President, in consultation with Cabinet, may at any time, by proclamation published in the Gazette, declare that a state of emergency exists.

11. The declaration by the President ceases to be effective on the expiration of seven days unless a resolution of National Assembly supported by a majority of all the members of Parliament (with the exception of the speaker) is passed within that period. Thereafter, the state of emergency exists for a three-month period commencing on the date of approval and can only be extended for a further period of three months. The National Assembly may revoke a state of emergency at any time.

12. In addition to the derogation under article 4 of the Covenant, article 25 of the Constitution provides for derogation from fundamental rights and freedoms if a state of emergency is declared in the Republic.

13. Where a person's freedom of movement is restricted or he is detained under article 25, article 26 provides how such a person shall be dealt with. Under article 25 derogable rights are: "the protection of right to personal liberty, the protection from deprivation of property, the protection for privacy of home and other property, the protection of freedom of conscience,

the protection of freedom of expression, the protection of freedom of assembly and association, the protection of freedom of movement, the protection from discrimination on the ground of race etc., and the protection of young persons from exploitation".

14. As indicated earlier, since independence was attained in 1964 a state of emergency prevailed until after the 1991 multi-party elections, when the state of emergency elapsed. The state of emergency, however, was invoked in March 1993 to deal with a situation involving a plot to make the country ungovernable through an orchestrated campaign of civil disobedience. As a result a few individual members of the former ruling party (UNIP) were detained. The detainees of the plot, which became commonly known as the "Zero option", were subsequently released from detention, though some were charged with criminal offences.

Article 5 - Limitation by law

15. Zambia has no legislation aimed specifically at groups or individuals who might undertake destructive action against the rights and freedoms recognized in the Covenant.

Article 6 - Right to life

16. The inherent right to life recognized in paragraph 1 of this article is embodied in article 12 of the Zambian Constitution. Derogation is only upon conviction by a court of competent jurisdiction in respect of a criminal offence.

Capital punishment

17. Under Zambian law the offences of murder and treason may attract the death penalty if the perpetrator is found guilty. This is under sections 201, and 43 of the Penal Code.

18. The death penalty has not been abolished in Zambia. However, there is a current debate involving the Law Development Commission, the Law Association of Zambia, human rights organizations and other interested members of the public on whether the death penalty should be abolished or not. However, even after the due process of the law, the convict may petition the President for clemency and secure a pardon or have his death sentence commuted to a term of imprisonment.

19. The Constitution also provides for circumstances where deprivation of life is regarded as reasonably justifiable and not a contravention of article 4. This is contained in article 12 (a) (b), (c) and (d) of the Constitution.

20. The sentence that is imposed on a convicted murderer depends on the circumstances. Zambian Law has recently been amended so as to allow the judge to take into account the circumstances involved in every case before a death sentence in a murder case can be imposed. Where there are special extenuating circumstances the judge can impose any other sentence that he may deem appropriate in the particular case other than a death sentence.

Abortion

21. The criminal law of Zambia also protects to a considerable degree the life of an unborn child. Section 151 of the Penal Code specifically provides for this.

Wrongful act or omission resulting in death

22. A wrongful act or omission causing death can give rise to an action for damages in tort. If death arose out of or in the course of the deceased's employment, compensation may also be sought from the workmen's Compensation Fund if the deceased person was a member or from the employer where the deceased was not a member of the fund. If the death is caused by the wrongful act, neglect or default of another, irrespective of whether such amounted in law to a crime, common law allows the personal representatives of the deceased to bring an action for damages for loss of economic or material advantage on behalf of those members of the deceased person's family who sustained that damage by reason of that death.

Genocide

23. Although this has not been specifically legislated for, the actions referred to in article 6 (3) constitute an offence in Zambia. A deprivation of life constituting genocide would be punishable as murder in the Zambian legal system.

Article 7 - Protection from torture

24. Article 7 of the Covenant as read with article 15 of the Constitution provides that no person shall be subjected to torture, inhuman or degrading treatment, punishment or other like treatment. Any person who violates article 15 of the Constitution is liable for criminal prosecution in addition to other civil remedies.

25. Zambia is not a signatory to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. However, in addition to the judicial remedies available, there are several commissions and organizations established to not only check and inquire into alleged cases of torture but also to educate people as to their rights as regards possible abuses. Such commissions include the MUNYAMA Human Rights Commission which was set up in 1993 to investigate cases of alleged torture that took place during 1973 and any present case. There are also non-governmental organizations such as the Civic Education, Citizens Advice Bureau. Law Association of Zambia which deals with promoting and monitoring human rights through civic education. It must however be noted that a court, in an appropriate case, may hand down a sentence of corporal punishment. Such cases are common assaults and simple thefts involving juveniles.

Criminal law

26. Any use of force against a person, save in exceptional circumstances, is (provided the requisite degree of intention or criminal negligence is proved) a criminal offence usually at the least amounting to assault.

Evidence in criminal trials

27. The courts in Zambia have the power to declare inadmissible evidence obtained under duress. This occurs during trial and if the accused alleges that the statement constituting his confession was obtained under duress, the court conducts a trial within a trial to determine whether the statement was freely made or not.

28. Circumstances that may render such a confession inadmissible include the following: if the accused in beaten, if he is kept in police cells for too long, if he is promised some advantage if he confesses or if he is forced to sign a statement he did not make.

Police officers

29. Police officers are bound by law to refrain from acts of torture. An allegation of ill-treatment on the part of the police officer could render an officer liable to charges of assault before the courts of law in addition to administrative charges. Indeed, the Police Act chapter 130 of the Laws of Zambia extensively provides for disciplinary action to be taken against erring police officers. This is meant to make the police more accountable.

30. Further, the Prisons Act chapter 134 of the laws of Zambia specifically provides for magistrates and judges to visit prisons at any time (section 123) during which complaints by remanded persons and convicts may be made. In addition, the Minister of Home Affairs may appoint official visitors to any prison to conduct visits at least once every two months (section 129).

Article 8 - Protection from slavery and servitude

31. Article 14 of the Zambian Constitution protects individuals from slavery and servitude and prohibits forced labour. It is a criminal offence in Zambia under section 261 of the Penal Code (chap. 146 of the laws of Zambia) to buy or dispose of any person as a slave. Further, section 262 of the Penal Code prohibits habitual dealing in slaves. Compulsory labour is also prohibited by section 263 of the Penal Code.

32. Exceptions to the above are contained in article 14 (3) of the Constitution which provides that "forced labour does not include any sentence or order of a court consisting of labour while a person is lawfully detained, labour while in armed or disciplined forces, labour called upon in times of emergency or war and labour required as part of civil obligations".

33. Contracts for employment are freely entered into in Zambia on normal contractual principle and may be terminated in accordance with the terms of the contract. Any clause in a contract which could be construed as having elements of servitude or forced labour is contrary to public policy and therefore unenforceable.

34. The Employment Act chapter 512 of the laws of Zambia provides for matters pertaining to employment. It provides for matters such as wages, control of employment agencies, provision of engagement of persons on contract of service and enforcement of contract of service.

35. The protection of young persons and children is dealt with in more detail in article 24 below.

Article 9 - Protection of personal liberty

36. As indicated earlier the personal liberty and security of the person of the individual is protected by article 13 of the Constitution.

37. Arrest of a person can occur with or without a warrant. Arrest without a warrant is the more usual case. At common law the purpose of an arrest is to bring the person before a court to be dealt with in accordance with the law. The major exceptions to this are the arrest of a person under state of emergency regulations and the arrest of suspected illegal immigrants to be held in custody pending deportation in the execution of a court sentence.

38. An arrest is unlawful unless reasons for arrest are communicated to that person. The grounds should be communicated to him in a language he understands. A person who is unlawfully arrested and/or imprisoned is entitled to be compensated. The process of arrest is normally followed by the formal charging of the person arrested at a police station where the person is advised of the nature of the charge or charges.

39. An arrest becomes unlawful if there is unreasonable delay in taking the suspect before a court of law to be dealt with according to the law. Bail is granted to a person arrested for a bailable offence. A police bond may be granted by an authorized police officer. The conditions for bail, if any, should not be made such that the person seeking bail is unable to meet them.

Article 10 - Protection from inhuman treatment

40. Zambia accepts the principles and objectives set out in article 10. Article 15 of the Constitution provides safeguards against inhuman treatment. However, in relation to paragraph 2, the difficulties brought about by the economic situation which have resulted in the Prison Service Commission being under-funded and a lack of adequate prison facilities have created problems in achieving segregation arrangements. For this reason, in some areas accused persons and convicted persons share the same prison facilities.

Juvenile offenders

41. Juvenile offenders are tried by juvenile courts and if the charge against them is proven, they are sent to approved schools or reformatories or placed under the care of social welfare officers. Economic constraints have impeded segregation of juvenile offenders from adult remand prisoners during the trial stages (pre-sentencing period).

Article 11 - Protection from imprisonment on failure to fulfil contractual obligations

42. Article 13 of the Constitution protects the individuals's personal liberty.

43. A person can only be sent to prison for a criminal wrong and in accordance with the procedure stipulated by the law.

44. A person cannot thus be sent to prison for failure to comply with a contractual obligation. The courts can only exercise its discretion to imprison a debtor where such a person has defaulted on a court order. It must be noted that the plaintiff in such a case has to bear the costs of keeping a judgement debtor in prison. When making the order, the court will usually make provision for bail. However, this provision is rarely utilized in Zambia due to the requirement of paying for the upkeep of the judgement debtor.

Article 12 - Protection of freedom of movement

45. Article 22 of the Constitution guarantees freedom of movement of the individual. Zambia does not have any laws that limit the movements of citizens or non-citizens within its territory, the only exception being:

"(a) entry to land set aside for defence purposes;

"(b) entry to certain mineral rich area such as emerald on the Zambian Copperbelt; and

"(c) certain national parks".

Passports

46. In Zambia a person who is able to establish his or her Zambian citizenship and identity is entitled to a Zambian passport. A passport in Zambia is a right for a Zambian citizen and this was clearly upheld in the case of Cuthbert Nyirongo v. the Attorney-General.

47. Entry into Zambia by non-citizens is governed by the Immigrations and Deportation Act chapter 122 of the laws of Zambia. However, Zambia has had problems of illegal immigrants who, even after deportation, return. Article 22 of the Constitution regulates entry by Zambians.

Article 13 - Deportation of aliens

48. The Zambian Government may order the expulsion from Zambia of a non-citizen. Existing Zambian arrangements comply with the requirements of the article and Zambia's policy will be to provide access to the court system for review before expelling non-citizens from Zambia.

49. The Minister of Home Affairs can order the expulsion of an alien, through judicial and administrative remedies for challenging such expulsion by the deportee are available.

Article 14 - Equality before the law

50. Article 18 of the Constitution guarantees the right to secure protection of the law. The Zambian Constitution provides strict separation of the powers

between the judicial, the legislative and the executive arms of the Government. Judicial powers are vested solely in the judiciary by article 91 of the Constitution.

51. In Zambia all persons are equal before the law. The only exceptions are children and persons of unsound mind who may not pursue an action in their own right before courts of law. However, actions may be brought on behalf of such person by their next of kin or guardian. All persons against whom criminal or civil proceedings are commenced have the right to have the matter heard in accordance with the requirements of paragraph 1 of this article.

52. The right to a fair hearing is guaranteed by ensuring the independence and impartiality of the judiciary, through the rules of evidence, by provision of legal representation and interpreter services and through remedies where allegations of unfairness are made about the manner in which a case is heard.

53. Hearings in camera include those for juvenile offenders, involving State secrets, rape and defilement.

54. Except in the appointment of certain classes of magistrates and local court justices, who may not have legal qualification, the appointment of magistrates and judges is subject to professional qualifications and appropriate experience. Age limitations may also apply; judges are subject to a retirement age of 65 years.

55. The Constitution provides in article 98 for the removal of judges of the Supreme and High Court in very limited circumstances of proven misbehaviour or proven incapacity, on advice of a tribunal constituted to inquire into the matter.

56. If a person acting in a judicial capacity has a bias which renders or reasonably appears to render him or her less than impartial, an appeal would be available against a decision made by that judge. A conviction so made by that judge may also be quashed or any order made set aside.

57. Zambian courts are bound by strict rules of evidence. These rules are contained in common law and, in some cases, in legislation. This is a very large body of law and some elements are addressed below in regard to article 14 (3).

58. Except where express provision is made to the contrary, all courts are open courts. Consequently, court proceedings are held in such a place and under such circumstances that it would be plain to an interested member of the public that he or she had a right of free access thereto. However, even where courts are open, the presiding judge or magistrate has discretion in the interest of justice to exclude persons, other than the advocates and the parties involved in the case, from the court.

59. The decisions of the Supreme Court and High Court are published in law reports. The Industrial Relations Court also publishes its findings in similar reports. Where proceedings are open to the public, the press are also able to publish details of the proceedings. Some publications may constitute contempt of court, for example, comments on proceedings that are published so

as to create a real risk of prejudice to one of the parties to the hearing which is pending. It also covers publication of matters likely to prejudice the mind of a court by putting it in possession of information which it ought not to have had, and which would embarrass it in the task of deciding the case fairly and free from prejudice.

Paragraph 2

60. It is a principle of the Zambian legal system in the administration of justice that an accused person is presumed innocent until proven guilty. The prosecution in criminal trials must prove its case "beyond reasonable doubt". In civil cases the standard of proof is on "the balance of probabilities".

Paragraph 3 (a)

61. When a person is arrested, he must be informed of the reasons for arrest. If a person is not arrested but proceeded against by summons, the nature of the charge must be included in the document necessary to enable the court to commence hearing the matter. The accused must also be informed of the identity of the prosecution witness. If available material evidence is withheld, a conviction can be quashed by an appellate court.

62. When an accused person does not understand English the charges should be translated for him or her into a language that he or she understands and an interpreter should be provided by the court throughout the trial to interpret the proceedings. The accused person holds the right to remain silent when questioned without prejudice to his case, of which right the court informs him.

Paragraph 3 (c)

63. All trials are conducted in the presence of the accused person. The accused is also entitled to access to a transcript of the proceedings.

64. In civil matters, where a summons has been served and the defendant does not appear, courts have the discretion to proceed ex parte to hear and determine the case in the absence of the defendant.

65. The entitlement of any person to defend a charge either in person or through an advocate is recognized in Zambia. When a person is not represented by a lawyer and if he is charged with a serious criminal offence, the court will normally advise the accused person to seek legal representation or seek legal aid. Article 18 (d) of the Zambian Constitution provides that unless legal aid is granted an accused person has the right to defend himself or herself or at his own expense, by a legal representative of his or her own choice. In serious offences when a person is unrepresented the courts will grant legal aid to such persons and the Legal Aid Department shall be obliged to defend such persons.

Paragraph 3 (e)

66. In Zambia the rule is that an accused person or his legal representative is entitled to cross-examine any other person who gives evidence. The accused

may secure the attendance of any compellable witness by the issue of a subpoena or summons which compels the person on whom it is served to attend the court. This rule applies both to the prosecution and the defence. However, exceptions to this rule do exist in relation to spouses. Otherwise, the general rule is that everyone is a competent and compellable witness in every case. If the witness so compelled fails to attend, the court may issue a warrant to bring that witness to the trial.

67. Certain information may be protected from disclosure by a claim to privilege. There are a limited number of categories of privilege, for example, "State" privilege and some protection for communication between legal adviser and client. A claim of privilege may be made by both the prosecution and the defence.

Paragraph 3 (f)

68. Article 18 (f) of the Zambian Constitution makes provision for this paragraph and in practice courts throughout Zambia provide interpreters in all cases where the accused is not conversant with the English language.

Paragraph 3 (g)

69. In Zambia the accused person is competent but not compellable to give evidence for himself or for a co-accused person. Thus an accused person is not required to give evidence in his or her own trial. The accused person may also opt to make an unsworn statement, to remain silent or to give evidence on oath.

Paragraph 4

70. When a court in Zambia is dealing with a juvenile offender the court shall constitute a juvenile court unless the juvenile is charged jointly with adults. The approach to the treatment of juvenile criminal offenders in Zambia is protective and rehabilitative rather than punitive. During remand without bail, children are generally separated from the adults in remand prisons. Except for very serious criminal offences juveniles are normally released on bail or under their parents' or guardian's supervision.

Paragraph 5

71. The right to appeal against sentence or conviction is provided for by legislation in Zambia. In practice all persons have the right of appeal to higher courts against sentence or conviction. When an accused person has pleaded guilty on his own volition the accused person has the right of appeal against sentence. When a person has not pleaded guilty to the charge the accused person can appeal against both sentence and conviction up to the Supreme Court.

Paragraph 6

72. Administrative procedures are available in Zambia to provide compensation for miscarriage of justice such as damages for malicious prosecution.

Paragraph 7

73. Zambian law recognizes the rule against double jeopardy which is the foundation of the pleas of autrefois acquit and autrefois convict. Article 18 (5) of the Zambian Constitution also guarantees this right.

Article 15 - Non-retroactive laws

74. The general rule in Zambia is that legislation that results in a change in the laws does not apply to past facts or events, thereby not affecting previously existing rights, privileges, obligations or liabilities. The law in Zambia cannot be applied retroactively. This right is also guaranteed under article 18 (4) of the Zambian Constitution.

Article 16 - Recognition before the law

75. Zambian laws recognize the legal status of individuals and their capacity to exercise rights and enter into contractual obligations. However, a person's legal capacity to act may be restricted for such reasons as minority or incapacity.

Article 17 - Protection of the rights to privacy and property

76. Article 17 of the Zambian Constitution protects the rights to privacy and property. The protection of the right to privacy and property is not absolute and the Constitution provides for limitation of this right. The exceptions are: public safety, public order, public morality, public health, in the interests of defence or for the purpose of protecting the rights or freedoms of other persons.

77. Article 17 (d) of the Zambian Constitution allows for searches of private property for the purposes of enforcing judgements or court orders in any civil proceedings and the search of any person or property by order of a court or entry upon any premises by such order. Searches without an order can only occur by consent under article 17 (1) of the Zambian Constitution or where it is incidental to a valid arrest. However, this power requires at least a reasonable suspicion that unlawfully obtained goods or weapons will be present on the person or the property searched. A sworn statement must first be made and the warrant will then be issued by a magistrate or a judge.

Article 18 - Protection of freedom of thought, conscience and religion

78. In Zambia the freedoms of thought, conscience and religion are guaranteed by article 19 of the Constitution. No restrictions are imposed on the exercise of these freedoms and there is no coercion to change or renounce any views or belief.

79. The President has declared Zambia a Christian country. No law prohibits other religions to be practised fully in Zambia.

80. The right of freedom of conscience and religion was upheld by the court in the case of Kachasu v. Attorney-General. The court held that the applicant may not be compelled by the State to sing the national anthem or salute the

flag on grounds of religious belief; however, these were conditions, along with other conditions, if the student wished to attend a government or aided school. The court further held that the applicant was not, as a result of attending a government school, denied freedom of religion, which she was free to practise as she pleased.

81. In terms of the education system religious education is not compulsory. No person at any place of education is compelled to receive religious instruction or take part in or attend any religious ceremony or observe if that instruction, ceremony or observance relates to a religion other than his own.

82. The limitations that exist are meant to ensure that the enjoyment of this right and freedom should not prejudice the rights and freedoms of others or the public interest.

Article 19 - Protection of freedom of expression

83. In Zambia everyone has the right to hold opinions without interference. Everyone also has the right of freedom of expression and to seek, receive and impart information and ideas as they wish. This is guaranteed by article 20 of the Constitution. Indeed, press freedom is allowed and there are no media restrictions or limitations and to an extent encouragement is given for the establishment of newspapers and television stations. Despite this, however, there have been complaints by the opposition of bias by State-owned papers and broadcasting services towards the ruling party. There also exist in Zambia independent newspapers such as the Weekly Post, the Sun and the National Mirror over which the State has no control. In addition, international newspapers circulate freely. What hinders full enjoyment of the available media is the economic situation in the country, especially among people in rural areas who have no access to newspapers as it is costly to deliver papers there, and the majority of people cannot afford radios and televisions. Most rural areas are also not yet electrified, hence people cannot buy television sets for use there even when they have the means to do so. Illiteracy is another hinderance among the Zambian people, which prevents the full realization and enjoyment of this right.

84. Article 20 (3) imposes limitations to ensure that the enjoyment of this right and freedom by any person does not prejudice the rights and freedoms of others or the public interest. The extent to which the laws and practices might restrict freedom of expression is a matter which itself is subject to monitoring by courts of law. Further restrictions under article 20 (2) of the Constitution are not inconsistent with paragraph 3 and are reasonably justifiable in a democratic society.

Article 20 - Prohibition of propaganda for war, national, racial or religious hatred

85. There is no general prohibition in Zambia on "propaganda for war". A number of actions, however, which could fall within that concept are currently prohibited. For example, the Penal Code chapter 146 of the Laws of Zambia in sections 46 and 52 outlaws a number of actions which could fall within the

concept of "propaganda for war". Also of relevance are crimes of treachery and sedition which are also outlawed by sections 53 to 63 of the Penal Code.

86. Whilst there is no general prohibition on incitement to discrimination, hostility or violence by advocating national, racial or religious hatred, restrictions do exist under section 70 of the Penal Code which specifically outlaws expressing or showing hatred, ridicule or contempt for persons because of race, tribe, place of origin or colour.

87. Article 23 of the Constitution further protects persons from discrimination based on race, religion, political opinions, etc.

Article 21 - Protection of the right to peaceful assembly

88. The right to peaceful assembly is recognized and guaranteed under article 21 of the Constitution. There are, however, restrictions that exist to regulate and control assemblies. These restrictions are principally aimed at providing a means for maintenance of public order, public health, and to protect the rights and freedoms of persons not taking part in a particular assembly. All persons in Zambia are free to organize and participate in assemblies except to the extent to which the law may restrict this.

89. All assemblies, whether held in public or in private places, are subject to the interests of public health, public morality and public safety. Law is also available to deal with situations where it is apprehended that riotous behaviour or breach of the peace will otherwise occur. Thus, organizers of assemblies must seek permits from the police in advance in order to hold assemblies. The police will then evaluate the purpose of the assembly and the nature of the assembly and then either grant or deny the issuance of a permit if they feel that such assembly is bound to result in a riotous assembly or is a threat to public safety. In practice, the police have on most occasions granted such permits and have only denied the issuance of such permits on very few occasions. This control is specifically aimed at maintaining law and order. Organizers of assemblies who are denied permits can seek recourse in the courts of law and the court, if it feels that the denial of the permit was unwarranted, may order it to be issued.

Article 22 - Protection of the right of freedom of association

90. This right is guaranteed by article 21 of the Constitution. There are no restrictions in Zambia on the right of freedom of association. However, associations constituting more than a certain number of people need to be registered. Article 21 of the Constitution imposes restrictions on persons employed in the public service or civil servants in relation to the enjoyment of this freedom.

Article 23 - Right to found a family

91. In Zambia, the family is a fundamental social institution and its importance is given implicit and explicit recognition. The family is generally regarded as extended as opposed to nuclear and as such recognized by statute and covered by customary law.

92. The scope of appreciation of the extended family is indeed appreciated by law as exemplified in certain legislation such as the Intestate and Succession Act 1985 which recognizes the extended family as beneficiaries of a deceased person's estate.

93. Two systems of law regulate the right to marry in Zambia: statutory and customary law. The right to marry under statutory law is governed by the Marriage Act chapter 211 of the Laws of Zambia. The right to marry and procedures for marriage are regulated by that Act as are the provisions applicable to dissolution of marriage, maintenance and custody of children. In accordance with customary law, however, there are no restrictions relating to age so long as the parties concerned have attained marriageable age. Customary law marriages are also potentially polygamous and dissolution of a marriage contracted under customary law and maintenance of any children born of such a marriage depend on the customary law under which the marriage was contracted. With regard to distribution of matrimonial property on divorce, the courts are required to distribute matrimonial property between the spouses in an equitable manner and depending on the custom under which the marriage was contracted.

Article 24 - Protection of young persons from exploitation

94. In Zambia this right is recognized and guaranteed by article 24 of the Constitution. Article 24(1) defines a child as any person under the age of 15 years. Article 24 of the Constitution proscribes the employment of children in any occupation that prejudices their health or education or interference with their physical, mental or moral development.

95. The rights of an unborn child are protected by chapter 146 of the Laws of Zambia which in sections 151 and 152 makes it a criminal offence to attempt to procure an abortion and to actually abort.

96. A child under the age of eight years is not criminally responsible for any act or omission (section 14, Penal Code, chapter 146).

97. Although the law prohibits the employment of young children and protects them from exploitation, the full realization of this right is not possible due to the prevailing economic situation in the country and to children being the most vulnerable and suffering more as a result of these circumstances.

98. The Constitution also prohibits trafficking of children and protects children against physical or mental ill-treatment, and all forms of neglect, cruelty and exploitation. Although there is a social welfare system to look after the interests of children, the Department is understaffed and suffers from a lack of qualified manpower and equipment necessary to look into issues affecting children country-wide.

99. In Zambia under the Births and Deaths Registration Act, chapter 20 of the Laws of Zambia, births must be registered immediately and children born in Zambia acquire Zambian citizenship by being born in Zambia.

Article 25 - Right to participate in the affairs of one's country

100. Zambian citizens are free to take part in public affairs. The principal means is by exercising the right to vote and being able to stand as a candidate for any public office. Citizens may also seek appointment to various non-elected public offices depending, of course, on whether they meet relevant qualifications. Vacancies in a number of public institutions are advertised, the exception being high judicial offices.

101. There are various lobbying groups involved in educating people about their rights to vote as well as monitoring elections.

102. Entrance to the Zambian public service and armed forces is open to all citizens. There is no discrimination in procedures for appointment, promotion and transfer in the public service on the grounds of political affiliation, race, colour, ethnic origin, religion, sex, marital status, pregnancy or physical disability. Complaints of discrimination on these grounds are dealt with by the Investigator General or the courts of law.

Article 26 - Non-discrimination

103. As stated earlier, the right to equality is enshrined in the Constitution of Zambia. There are other pieces of legislation which can be interpreted as allowing some elements of discrimination but are what can be described as "positive discrimination" with the purpose of protecting groups covered by that particular legislation, for example, the employment of Women and Young Children Act, chapter 502 of the Laws of Zambia.

Article 27 - Protection from racial discrimination

104. Zambia is a multiracial society and it recognizes, and supports and protects minorities. The basic position is that all Zambians have full rights to pursue their own interests, provided they are consistent with the law.

105. The protection of the rights contained in this article are provided for under the general human rights machinery which exists in Zambia and has already been referred to.